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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,416	10/22/2003	Patrick W. Kelley	PWK-02-1-D	6171
7590	12/30/2004			
Thomas E. Kelley P.O. Box 302 Mystic, CT 06355			EXAMINER STEIN, STEPHEN J	
			ART UNIT 1775	PAPER NUMBER
DATE MAILED: 12/30/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicati n N .

10/691,416

Applicant(s)

KELLEY, PATRICK W.

Examiner

Stephen J Stein

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— Th MAILING DATE of this communication appears on the cover sheet with the correspondenc address —

**P r i d r Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disp sition of Claims**

- 4) ☒ Claim(s) 1 and 4-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Pri rity under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### *Claim Rejections - 35 USC § 103*

2. Claims 1 and 4-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,253,458 (Christian) in view of DE 2823064A (Whitten).

Christian teaches simulated logs (containing variations in diameter) made of polyvinyl chloride thermoplastic (See abstract).

Christian fails to teach that the thermoplastic is polypropylene.

Whitten teaches imitation/simulated tree parts which is made of various materials including polypropylene (See abstract).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to substitute polypropylene for the PVC disclosed in Christian, since the reference teaches that it is a suitable material for the same purpose (to simulate natural wood). Although Christian does not specifically disclose the claimed diameter or length of the simulated log, absent a showing of criticality it would have been obvious to a person of ordinary skill in the art at the time of the invention to optimize the diameter (a result effective variable) through routine experimentation). It has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). With regard to the claimed properties, it expected that the disclosed materials would exhibit these properties, since they are the same materials as claimed by applicants.

***Response to Arguments***

3. Applicant has amended independent claim 1 to include the limitations “wherein said log comprises at least one polyolefin selected from the group consisting of polyethylene and polypropylene” and argues that there is no motivation in the Whitten reference for a person of ordinary skill in the art to substitute a high flexural modulus polypropylene material for the PVC material disclosed in the Christian reference. This argument has been considered, but not deemed persuasive. The Whitten reference specifically discloses that polypropylene may be used to make simulated tree parts. Therefore, one of ordinary skill in the art would be motivated to substitute the polypropylene for PVC since the reference specifically teaches that polypropylene is a suitable material for making simulated tree parts (e.g. a simulated log). Applicant has not provided any evidence of unexpected results with respect to the use of polypropylene in the simulated logs. The rejections are maintained.

***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Stein whose telephone number is 572-272-1544. The examiner can normally be reached on Monday through Friday from 8:30 a.m. to 5:00 p.m. If the attempts to reach the examiner are unsuccessful, the examiner's supervisor, Deborah Jones can be reached by dialing 571-272-1535. The official fax number is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

December 21, 2004



Stephen J. Stein  
Primary Examiner  
Art Unit 1775